

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 956 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

-----  
STATE OF GUJARAT

Versus

VINODKUMAR VINAYAK MADHAVRAO

-----  
Appearance:

Shri M.A. Bukhari, Additional Public Prosecutor,  
for the Appellant-State

Shri G. Ramakrishnan, Advocate, for the  
Respondent (appointed)

-----  
CORAM: A.N. DIVECHA, J.

DATE: 26/09/1996

ORAL JUDGMENT

The judgment and order of acquittal passed by the  
learned Metropolitan Magistrate of Court No. 16 at

Ahmedabad on 30th June 1981 in Criminal Case No. 919 of 1980 is under challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure (the Cr.P.C. for brief). By his impugned judgment and order, the learned trial Magistrate acquitted the respondent of the offences punishable under sec. 326 of the Indian Penal Code, 1860 (the IPC for brief) and under sec. 135 of the Bombay Police Act, 1951 (the Act for brief).

2. The facts giving rise to this appeal move in a narrow compass. The respondent is alleged to have inflicted injuries with a sharp razor to one Dhanjibhai Bhagubhai Patel around the noon time on 20th July 1989. The injured victim filed his complaint before the police. It is at Ex. 5 on the record of the trial court. On completion of investigation, a charge-sheet was submitted to the Court of the Chief Metropolitan Magistrate at Ahmedabad. The case thereupon came to be registered as Criminal Case No. 919 of 1980. It appears to have been assigned to the Metropolitan Magistrate of Court No. 16 for trial and disposal. The charge against the respondent as the accused was framed on 17th October 1980 at Ex. 2 on the record of the trial court. The accused was charged with the offences punishable under sec. 326 of the IPC and sec. 135 of the Act. He did not plead guilty to the charge. Thereupon he was tried. After recording the prosecution evidence and recording the further statement of the accused under sec. 313 of the Cr.P.C. and after hearing the parties, by his judgment and order passed on 30th June 1981 in Criminal Case No. 919 of 1980, the learned trial Magistrate acquitted the accused of the offences with which he stood charged. That aggrieved the prosecution agency. It has therefore by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Cr.P.C.

3. This case was taken up for hearing yesterday. None has appeared on behalf of the respondent-accused though duly served. Since the offence under sec. 326 of IPC, if proved, is punishable inter alia with imprisonment for life, I have thought it fit to appoint some advocate to assist this Court on behalf of the respondent. I ascertained from learned Advocate Shri Ramakrishnan sitting in the Court yesterday whether he would be in a position to prepare himself with the case at a short notice. Upon his showing readiness and willingness to do so, I have thought it fit to appoint him as an advocate to appear on behalf of the accused. It must be said to his credit that he has prepared himself by reading papers overnight.

4. Learned Additional Public Prosecutor Shri Bukhari has taken me through the entire evidence on record to convince me that the impugned judgment and order of acquittal cannot be sustained in law and to persuade me to reach the conclusion that the prosecution has brought the guilt home to the accused beyond any reasonable doubt. As against this, learned Advocate Shri Ramakrishnan has submitted that the view taken by the learned trial Magistrate is the only possible view on the basis of the material on record and it calls for no interference by this Court in this appeal. He has further submitted that, even if the other view is possible, the impugned judgment and order calls for no interference by this Court as this is an appeal against acquittal and, according to well-settled principles, the judgment and order of acquittal passed by the learned trial Magistrate should be affirmed if two views are possible.

5. The learned trial Magistrate has not believed the prosecution case mainly on the ground of contradictions galore found at trial. The learned trial Magistrate has found material contradictions in the oral evidence of the complainant himself at Ex. 4 on the record of the trial court qua his complaint at Ex.5. The learned trial Magistrate has also found that the information of the incident conveyed by the concerned Medical Officer of L.G. Hospital at Maninagar in Ahmedabad to the police at Ex. 15 on the record of the trial court was at variance with the complaint at Ex. 5 on the record of the case. It may be mentioned that in the vardi taken down by the police at Ex. 15 the names of two assailants figured whereas in the complaint the name of the respondent herein alone as the assailant was mentioned. The other assailant named in the vardi at Ex. 15 was one Himmatbhai. In his oral testimony at Ex. 4 on the record of the case the complainant is reported to have found him at the place of the incident. The prosecution has not chosen to explain the discrepancy in that regard appearing in the vardi at Ex. 15 and the complaint at Ex. 5 on the record of the case. This is a major contradiction shaking the credibility of the prosecution case.

6. One Yusufbhai Nannubhai has been examined as prosecution witness No. 4 at Ex. 8 on the record of the case as an eye witness to the incident. His evidence has been found by the learned trial Magistrate worthy of no credence or credibility. His evidence was also found to be full of certain material contradictions. He appeared

to be a chance witness. No explanation is given why he was required to be at the place of the incident. No attempt is made to show that the place of the incident was his daily route or he used to pass by that place very frequently. He can therefore be said to be a chance witness. His evidence has to be scrutinised with care and caution.

7. According to the witness at Ex. 8, his statement was recorded at the Haveli Police Station and the respondent-accused was found therein at the relevant time. The investigating officer in his oral testimony at Ex. 13 on the record of the case has stated that his statement was recorded at the scene of offence. That apart, certain contradictions qua his police statement have also been brought on record regarding the manner in which the incident had taken place. In view of these contradictions, the learned trial Magistrate has rightly not believed his evidence in support of the prosecution version.

8. One Gunvant Dalpatbhai was examined as prosecution witness No.2 at Ex. 6 on the record of the case as another eye witness. He appeared to be around 12 years of age at the time of recording his oral testimony. He was certainly a child witness. His evidence also requires to be appreciated with due care and caution. The learned trial Magistrate did not believe his evidence also on the ground of contradictions found therein qua the evidence of the complainant at Ex. 4 on the record of the case. Contradictions may not be found serious as submitted by learned Additional Public Prosecutor Shri Bukhari for the appellant but the cumulative effect of contradictions galore would shake the credibility of this witness as well.

9. As pointed out hereinabove, the learned trial Magistrate has not chosen to rely on the testimony of the complainant himself at Ex. 4 on the record of the case on account of contradictions found in his version at trial and that in the complaint at Ex. 5 on the record of the case. Contradictions as to the time sense and the sequence of injuries may not be treated as serious as submitted by learned Additional Public Prosecutor Shri Bukhari for the appellant-State. However, as rightly submitted by learned Advocate Shri Ramakrishnan for the respondent, the totality of circumstances in the light of so many contradictions found in his versions at trial and in the complaint would certainly raise a doubtful position as to the occurrence of the incident as narrated by him. The learned trial Magistrate, as rightly

submitted by learned Advocate Shri Ramakrishnan for the respondent, has, on the basis of the material on record, come to the conclusion that the prosecution has not been able to establish its case at trial beyond any reasonable doubt. This conclusion is not found be perverse in any manner. In that view of the matter, it does not call for any interference by this Court in this appeal.

10. In the result, this appeal fails. It is hereby dismissed.

-----